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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/523,574	01/28/2005	Hermann Grether	SMB-PT124 (PC 03 404 B US	1426
3624 7590 05/26/2009 VOLPE AND KOENIG, P.C. UNITED PLAZA, SUITE 1600 30 SOUTH 17TH STREET PHILADELPHIA, PA 19103			EXAMINER GORMAN, DARREN W	
			ART UNIT 3752	PAPER NUMBER
			MAIL DATE 05/26/2009	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/523,574	<b>Applicant(s)</b> GRETHER, HERMANN	
	<b>Examiner</b> Darren W. Gorman	<b>Art Unit</b> 3752	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 04 May 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-10 and 12-32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 12-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 January 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on May 4, 2009 has been entered.

### ***Drawings***

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the second housing part at the outflow side being “stiffened by longitudinal webs that are distributed, generally uniformly, in the circumferential direction”, as recited in claims 30 and 31, must be shown or the feature(s) canceled from the claim(s). No new matter should be entered. It is noted that Applicant’s specification denotes these longitudinal webs with reference number “22”, however reference number “22” as shown in the drawings, does not appear to clearly designate any element that could possibly be the disclosed and claimed “longitudinal webs”. In fact, based on what is shown in the drawings, it is not clear what element(s) could possibly show the recited “longitudinal webs”.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing

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sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Double Patenting***

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

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Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1-10 and 12-32 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 34-63, 66 and 67 of copending Application No. 10/519,572. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the copending application include each of the essentially recited structural components of the instant application claims, including a two-part snap-fit housing, a perforated plate jet fractionating device formed in one-piece with one of the housing parts, detachable plate-shaped insert parts having webs disposed in a grid or net manner, and a flow rectifier, and the interrelated details thereof.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

### ***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claims 1-10 and 12-32 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

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The claims now recite that the first and second housing parts are “releasably connectable via a snap-fit connection with one another”. The originally filed disclosure does not adequately support such a limitation. The originally filed specification discloses that the “at least two housing parts can be connected to one another in releasable fashion” (see paragraph [0010]) and that they can be “locked with one another in releasable fashion” (see paragraphs [0016] and [0060]), however this does not adequately support the now claimed “snap-fit connection”, because parts can be releasably connected/locked together without necessarily being in a “snap-fit” type connection.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-10, 12-18, 21-26 and 32 are rejected under 35 U.S.C. 102(b) as being anticipated by German Patent Document, DE 20006163 U1.

DE 20006163 U1 shows a jet regulator (1) (see Figures 1-5) comprising: a mounting housing (4) divided into first (5) and second (6) housing parts connected together by a snap-fit connection; a jet fractionating device (2) formed as a perforated plate having through flow holes (see Figure 3) located inside the mounting housing, wherein the first housing part has a peripheral shoulder at a flow inlet side (see Figures 1 and 2), and wherein the first housing part is connected in one piece with the jet fractionating device; a jet regulating device (3) having a

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plurality of plate-shaped insert parts (10) receivable within the second housing part up to a stop or support (see Figure 4), the insert parts having webs oriented transverse to a flow direction, the webs delimiting between them through flow openings (see Figure 5), the webs disposed in a manner of a grid or a net (see again Figure 5); and a flow rectifier (11) having flow guide walls defining exit openings arranged in a plane, downstream from the jet fractionating device at a flow outflow side of the jet regulator (see Figures 1 and 4).

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 27-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over German Patent Document DE 20006163 U1, in view of Flieger, USPN 6,588,682.

DE 20006163 U1 shows/discloses all of the recited limitations as set forth in claim 1, however DE 20006163 U1 is silent as to including at least one soft and/or water-repellant surface on the housing part in the area of the water exit opening, or forming the housing part in at least the area of the water exit opening from an elastic material.

Flieger shows a jet regulator and discloses that other prior art jet regulators are often subject to calcification at their respective water exit openings. Flieger teaches forming at least the outlet portion of the device from an elastic material, thus permitting a user to easily and effectively clean the outlet portion with a finger tip (see Figure 1 and column 5, lines 30-53), and

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Flieger also discloses applying a soft and/or water-repellant surface to the outlet portion to substantially prevent wetting of the outlet portion, thus reducing or eliminating calcification (see column 5, line 54 through column 6, line 18).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to form at least the housing part in the area of the water exit opening of the device of DE 20006163 U1 from an elastic material, and/or coat at least the housing part in the area of the water exit opening of the device of DE 20006163 U1 with a soft and/or water-repellant surface, as taught by Flieger, thus permitting a user to easily and effectively clean the outlet portion with a finger tip, and/or thus reducing or eliminating calcification at the water exit opening.

### ***Response to Arguments***

11. Applicant's arguments, see pages 9-11 of the "Remarks/Arguments" section of the response filed May 4, 2009, with respect to the prior art rejections of claim 1 and its dependents as set forth in the office action mailed January 2, 2009 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darren W. Gorman whose telephone number is 571-272-4901. The examiner can normally be reached on M-F 7:30-5:00.



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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Len Tran can be reached on 571-272-1184. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Darren W Gorman/  
Primary Examiner, Art Unit 3752

/D. W. G./  
Primary Examiner, Art Unit 3752